

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN SENATE MAY 12, 2003

SENATE BILL

No. 269

Introduced by Senator Soto

(Coauthor: Assembly Member Bermudez)

February 18, 2003

An act to add Section 22212.5 to the Education Code, and to amend Section 20098 of the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately. *retirement.*

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as amended, Soto. Public employees' retirement: manager compensation.

Existing law authorizes the Board of Administration of the Public Employees' Retirement System to appoint and fix the compensation of an executive officer, assistant executive officer, and other necessary employees. Existing law also authorizes the Teachers' Retirement Board to appoint a chief executive officer and other employees as are necessary to administer the State Teachers' Retirement System. *Existing law prohibits designated employees of state agencies from taking any specified actions on behalf of any person to influence certain actions by the agency within 12 months after leaving that position.*

This bill would authorize those retirement boards to appoint and fix the compensation of, according to specified principles, an executive officer, an actuary, investment officers, and portfolio managers. The bill would specify that those positions, when filled through a civil

service appointment, shall be filled from an eligible list, as specified, and would be subject to the provisions of existing law establishing the tenure of managerial employees under state civil service. *The bill would also prohibit any person who served in one of those positions for less than 5 years from taking any specified actions on behalf of any person, other than the state, to influence certain actions by the retirement boards or systems within 2 years after leaving that position.* The bill would make related findings and declarations, *including a declaration that the bill's provisions are severable.*

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~—majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Section 17 of Article XVI of the California Constitution
4 provides that the “retirement board of a public pension or
5 retirement system shall have the sole and exclusive fiduciary
6 responsibility over the assets of the public pension or retirement
7 system. The retirement board shall also have sole and exclusive
8 responsibility to administer the system in a manner that will assure
9 prompt delivery of benefits and related services to the participants
10 and their beneficiaries. The assets of a public pension or retirement
11 system are trust funds and shall be held for the exclusive purposes
12 of providing benefits to participants in the pension or retirement
13 system and their beneficiaries and defraying reasonable expenses
14 of administering the system.”

15 (b) In order to permit the Board of Administration of the Public
16 Employees’ Retirement System and the Teachers’ Retirement
17 Board to exercise their fiduciary responsibility pursuant to Section
18 17 of Article XVI of the California Constitution, the Department
19 of Personnel Administration established certain senior executive
20 positions and investment management positions at both retirement
21 systems that were exempt from civil service, and subsequently
22 delegated authority to the Board of Administration and the
23 Teachers’ Retirement Board to establish additional exempt
24 positions and determine the compensation paid to those employees

pursuant to compensation policies established by the respective boards.

(c) The Court of Appeal for the Third District of California, in *Westly v. Board of Administration* (~~Feb. 25, 2003, C039686~~) ~~Cal.App. 4th~~ [2003 Cal.App. Lexis 271], held that, (2003) 105 Cal.App.4th 1095, held that, notwithstanding Section 17 of Article XVI of the California Constitution, Article VII of the California Constitution limited the number of Public Employees' Retirement System positions that may be exempt from civil service to only one employee selected by the Board of Administration, and that compensation paid to employees was subject to the authority of the Department of Personnel Administration.

(d) The continued ability of the Board of Administration and the Teachers' Retirement Board to meet their fiduciary obligation to their members requires that they be able to attract and retain employees in key senior executive and investment management positions with compensation that is consistent with the compensation paid to employees in other public retirement and financial service organizations.

(e) The express purpose of this act is to enable the Board of Administration and the Teachers' Retirement Board to attract and retain key personnel by empowering those boards to establish both appropriate classifications within the civil service for its senior executive and investment management employees and the compensation paid to those employees, competitive with the compensation paid to employees in other retirement and financial service entities, consistent with the holding of *Westly v. Board of Administration*, and notwithstanding the provisions of the Government Code that provide the State Personnel Board and the Department of Personnel Administration that authority.

SEC. 2. Section 22212.5 is added to the Education Code, to read:

22212.5. (a) This section shall apply to the following positions in the system: chief executive officer, system actuary, chief investment officer, and other investment officers and portfolio managers whose positions are designated managerial pursuant to Section 18801.1 of the Government Code.

(b) Notwithstanding Sections 19816, 19825, and 19826 of the Government Code, the board shall fix the compensation for the

1 positions specified in subdivision (a). In so doing, the board shall
2 be guided by the principles contained in Sections 19826 and 19829
3 of the Government Code, consistent with its fiduciary
4 responsibility to its members to recruit and retain highly qualified
5 and effective employees for these positions.

6 (c) When a position specified in subdivision (a) is filled
7 through a general civil service appointment, it shall be filled from
8 an eligible list based on an examination that was held on an open
9 basis, and tenure in those positions shall be subject to the
10 provisions of Article 2 (commencing with Section 19590) of
11 Chapter 7 of Part 2 of Division 5 of Title 2 of the Government
12 Code. In addition to the causes for action specified in that article,
13 the board may take action under the article for causes related to its
14 fiduciary responsibility to its members, including the employee's
15 failure to meet specified performance objectives.

16 (d) *An individual who held a position designated in subdivision*
17 *(a) for less than five years may not, for a period of two years after*
18 *leaving that position, for compensation, act as agent or attorney*
19 *for, or otherwise represent, any other person, except the state, by*
20 *making any formal or informal appearance before or by making*
21 *any oral or written communication to the Teachers' Retirement*
22 *Board, or any officer or employee thereof, if the appearance or*
23 *communication is made for the purpose of influencing*
24 *administrative or legislative action or any action or proceeding*
25 *involving the issuance, amendment, awarding, or revocation of a*
26 *permit, license, grant, contract, or sale or purchase of goods or*
27 *property.*

28 SEC. 3. Section 20098 of the Government Code is amended
29 to read:

30 20098. (a) The board shall appoint and, notwithstanding
31 Sections 19816, 19825 and 19826, shall fix the compensation of
32 an executive officer, a chief actuary, a chief investment officer, and
33 other investment officers and portfolio managers whose positions
34 are designated managerial pursuant to Section 18801.1.

35 (b) The executive officer, deputy executive officers, and the
36 assistant executive officers may administer oaths.

37 (c) When fixing the compensation for the positions specified in
38 subdivision (a), the board shall be guided by the principles
39 contained in Sections 19826 and 19829, consistent with its

1 fiduciary responsibility to its members to recruit and retain highly
2 qualified and effective employees for these positions.

3 (d) When a position specified in subdivision (a) is filled
4 through a general civil service appointment, it shall be filled from
5 an eligible list based on an examination that was held on an open
6 basis, and tenure in the position shall be subject to the provisions
7 of Article 2 (commencing with Section 19590) of Chapter 7 of Part
8 2 of Division 5 of Title 2. In addition to the causes for action
9 specified in that article, the board may take action under the article
10 for causes related to its fiduciary responsibility to its members,
11 including the employee's failure to meet specified performance
12 objectives.

13 ~~SEC. 4. This act is an urgency statute necessary for the~~
14 ~~immediate preservation of the public peace, health, or safety~~
15 ~~within the meaning of Article IV of the Constitution and shall go~~
16 ~~into immediate effect. The facts constituting the necessity are:~~

17 ~~In order to resolve any uncertainty regarding the employment~~
18 ~~status of key employees of the Public Employees' Retirement~~
19 ~~System and the Teachers' Retirement System and to thereby~~
20 ~~enable those systems to carry out their fiduciary responsibilities to~~
21 ~~hire and retain qualified individuals in those key positions, it is~~
22 ~~necessary that this act take effect immediately.~~

23 (e) *An individual who held a position designated in subdivision*
24 *(a) for less than five years may not, for a period of two years after*
25 *leaving that position, for compensation, act as agent or attorney*
26 *for, or otherwise represent, any other person, except the state, by*
27 *making any formal or informal appearance before or any oral or*
28 *written communication to the Public Employees' Retirement*
29 *System, or any officer or employee thereof, if the appearance or*
30 *communication is made for the purpose of influencing*
31 *administrative or legislative action or any action or proceeding*
32 *involving the issuance, amendment, awarding, or revocation of a*
33 *permit, license, grant, contract, or sale or purchase of goods or*
34 *property.*

35 *SEC. 4. The provisions of this act are severable. If any*
36 *provision of this act or its application is held invalid, that*
37 *invalidity shall not affect other provisions or applications that can*
38 *be given effect without the invalid provision or application.*